08/28/00

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/356,313	07/16/99	PESCHKE B	5573.210-US

VB

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EXAMINER	
LUKTON, D	
ART UNIT	**PAPER NUMBER**
1653	6

DATE MAILED: 08/28/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Notice of Abandonment

Application No.	Applicant(s)
09/356,313	Peschke
Examiner	**Group Art Unit**
David Lukton	1653

This application is abandoned in view of:

☒ applicant's failure to timely file a proper response to the Office letter mailed on *Jan 19, 2000* .

☐ A response (with a Certificate of Mailing or Transmission of _____) was received on _____ , which is after the expiration of the period for response (including a total extension of time of ____ month(s)) which expired on _____ .

☐ A proposed response was received on _____ , but it does not constitute a proper response to the final rejection.

(A proper response to a final rejection consists only of: a timely filed amendment which places the application in condition for allowance; a Notice of Appeal; or the filing of a continuing application under 37 CFR 1.62 (FWC)).

☒ No response has been received.

☐ applicant's failure to timely pay the required issue fee within the statutory period of three months from the mailing date of the Notice of Allowance.

☐ The issue fee (with a Certificate of Mailing or Transmission of _____) was received on _____ .

☐ The submitted issue fee of $_____ is insufficient. The issue fee required by 37 CFR 1.18 is $_____ .

☐ The issue fee has not been received.

☐ applicant's failure to timely file new formal drawings as required in the Notice of Allowability.

☐ Proposed new formal drawings (with a Certificate of Mailing or Transmission of _____) were received on _____ .

☐ The proposed new formal drawings filed _____ are not acceptable.

☐ No proposed new formal drawings have been received.

☐ the express abandonment under 37 CFR 1.62(g) in favor of the FWC application filed on _____ .

☐ the letter of express abandonment which is signed by the attorney or agent of record, the assignee of the entire interest, or all of the applicants.

☐ the letter of express abandonment which is signed by an attorney or agent (acting in a representative capacity under 37 CFR 1.34(a)) upon the filing of a continuing application.

☐ the decision by the Board of Patent Appeals and Interferences rendered on _____ and because the period for seeking court review of the decision has expired and there are no allowed claims.

☐ the reason(s) below:

Christopher S. F. Low

CHRISTOPHER S. F. LOW
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Restriction to one of the following inventions is required under 35 U.S.C. §121:

1. Claims 1-12, 15, drawn to compounds in which M is $-C(R^{27})=C(R^{28})-$, and c +d = 0.

2. Claims 1-11, 15, drawn to compounds in which M is $-C(R^{27})=C(R^{28})-$, c +d > 0.

3. Claims 1-7, 9, 11, 12, 15, drawn to compounds in which M is -O-, c + d = 0, and none of R^6, R^7, R^8 may form $-(CH_2)_i-U-(CH2)j-$

4. Claims 1-7, 9-11, 15, drawn to compounds in which M is -O-, c + d = 0, and at least one of R^6, R^7, R^8 must form $-(CH_2)_i-U-(CH2)_j-$

5. Claims 1-7, 9-11, 15, drawn to compounds in which M is -O-, and c + d > 0

6. Claims 1-7, 9-11, drawn to compounds in which M is -S-

7. Claims 1-11, 15, drawn to compounds in which M is arylene or heteroarylene, and c + d > 0

8. Claims 1-12, 15, drawn to compounds in which M is arylene or heteroarylene, and c + d = 0.

9. Claims 13-14, 18, drawn to a method of using the compounds of Group 1.

10. Claims 13-14, 18, drawn to a method of using the compounds of Group 2.

11. Claims 13-14, 18, drawn to a method of using the compounds of Group 3.

12. Claims 13-14, 18, drawn to a method of using the compounds of Group 4.

13. Claims 13-14, 18, drawn to a method of using the compounds of Group 5.

14. Claims 13-14, 18, drawn to a method of using the compounds of Group 6.

15. Claims 13-14, 18, drawn to a method of using the compounds of Group 7.

16. Claims 13-14, 18, drawn to a method of using the compounds of Group 8.

17. Claim 16, drawn to a method of using the compounds of Group 1.

18. Claim 16, drawn to a method of using the compounds of Group 2.

19. Claim 16, drawn to a method of using the compounds of Group 3.

20. Claim 16, drawn to a method of using the compounds of Group 4.

21. Claim 16, drawn to a method of using the compounds of Group 5.

22. Claim 16, drawn to a method of using the compounds of Group 6.

23. Claim 16, drawn to a method of using the compounds of Group 7.

24. Claim 16, drawn to a method of using the compounds of Group 8.

25. Claim 17, drawn to a method of using the compounds of Group 1.

26. Claim 17, drawn to a method of using the compounds of Group 2.

27. Claim 17, drawn to a method of using the compounds of Group 3.

28. Claim 17, drawn to a method of using the compounds of Group 4.

29. Claim 17, drawn to a method of using the compounds of Group 5.

30. Claim 17, drawn to a method of using the compounds of Group 6.

31. Claim 17, drawn to a method of using the compounds of Group 7.

32. Claim 17, drawn to a method of using the compounds of Group 8.

The claimed inventions are distinct.

Many of the groups are distinguished on the basis of whether "M" is bonded directly the N-terminal carbonyl group, or whether it is at least one carbon atom removed therefrom.

(If the sum of "c" and "d" is zero, "M" must be bonded directly to the carbonyl; if the sum of "c" and "d" is a positive integer, "M" cannot be bonded to the N-terminal carbonyl). For the case of "M" being bonded directly to the carbonyl, and at the same time, "M" representing an oxygen atom, the resulting functional group is a carbamate, which is a common functional group found at the N-terminus of dipeptides. As such, compounds meeting these criteria have been divided into two groups. In the case of "M" being a sulfur atom, no further restriction is imposed.

Inventions 1-8 and 9-32 are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). As it happens, peptides are ubiquitous throughout physiological systems. Virtually any biochemical process that one can name has been shown to be, or asserted to be impacted by peptides. Nevertheless, in the event that one of Groups 1-8 is elected, and claims therein found allowable, the method-of-use claims will be rejoined therewith, subject to the same limitations [*In re Ochiai* (**37** USPQ2d 1127)].

Notwithstanding the foregoing, the possibility of rejoining one or more groups is not precluded by the fact of initial restriction.

Applicant is advised that for the response to this requirement to be complete, an election of the invention to be examined must be indicated, even if the requirement is traversed (37 C.F.R. 1.143).

Applicant is reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with

37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

. . . .

In addition to the foregoing, applicants are required under 35 U.S.C. §121 to elect disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. A "specie" is a specific compound, with all substituent variables fully accounted for.

Applicant is advised that a response to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a generic claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

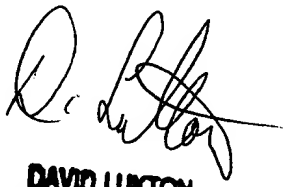
Upon allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are witten in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP 809.02(a).

Should applicant traverse on the ground that the species are not patentable distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. §103 of the other invention.

✺

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton. Phone: (703) 308-3213.

An inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.



DAVID LUKTON
PATENT EXAMINER
GROUP 1800